

114TH CONGRESS  
2D SESSION

# S. 2546

To amend the Internal Revenue Code of 1986 to require certain plans providing for nonqualified deferred compensation to require repayment of benefits to the employer in the event of extraordinary governmental assistance, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2016

Mr. WHITEHOUSE (for himself, Mr. BLUMENTHAL, and Mrs. McCASKILL) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to require certain plans providing for nonqualified deferred compensation to require repayment of benefits to the employer in the event of extraordinary governmental assistance, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “No Windfalls for  
5       Bailed Out Executives Act”.

1 SEC. 2. REQUIRED REPAYMENT OF CERTAIN NON-  
2                   **QUALIFIED DEFERRED COMPENSATION IN**  
3                   **CASE OF EXTRAORDINARY GOVERNMENTAL**  
4                   **ASSISTANCE.**

5         (a) IN GENERAL.—Subsection (a) of section 409A of  
6 the Internal Revenue Code of 1986 is amended by adding  
7 at the end the following new paragraph:

8                 “(5) REQUIRED REPAYMENT IN CASE OF EX-  
9                   **TRAORDINARY GOVERNMENTAL ASSISTANCE.—**

10                 “(A) IN GENERAL.—The requirements of  
11 this paragraph are met if the plan provides  
12 that, if any employer maintaining the plan re-  
13 ceives extraordinary governmental assistance—

14                 “(i) any compensation deferred under  
15 the plan which is attributable to services  
16 performed by a designated individual with  
17 respect to such employer during the 36-  
18 month period ending on the date of the re-  
19 ceipt of such assistance shall be forfeited,  
20 if not yet distributed by such date, or re-  
21 paid to the employer, if already distributed  
22 by such date, and

23                 “(ii) no further compensation will be  
24 deferred under the plan with respect to  
25 such designated individuals before the date  
26 on which the extraordinary governmental

1           assistance is fully repaid to the Federal  
2           Government.

3           “(B) EXTRAORDINARY GOVERNMENTAL  
4           ASSISTANCE.—For purposes of this paragraph,  
5           the term ‘extraordinary governmental assist-  
6           ance’ means any grant, loan, loan guarantee, or  
7           other assistance (whether in cash or otherwise)  
8           made by the Federal Government to or on be-  
9           half of an employer which is intended to pre-  
10          vent the employer from becoming imminently  
11          insolvent (within the meaning of section  
12          101(32) of title 11, United States Code) or to  
13          cure such insolvency of the employer.

14          “(C) DESIGNATED INDIVIDUAL.—For pur-  
15          poses of this paragraph, the term ‘designated  
16          individual’ means—

17           “(i) any key employee (as defined in  
18           section 416(i)(1)),  
19           “(ii) any member of the board of di-  
20           rectors or other officer, and  
21           “(iii) any other employee having an  
22           annual compensation from the employer of  
23           more than \$1,000,000 in any year during  
24           or after the 36-month period ending on the

3                 “(D) ADDITIONAL TAX PAYABLE WITH RE-  
4                 SPECT TO COMPENSATION DEFERRED OR NOT  
5                 REPAID IN VIOLATION OF RULES.—

6                     “(i) IN GENERAL.—If compensation is  
7                     required to be included in gross income  
8                     under paragraph (1)(A) for a taxable year  
9                     due to a failure to meet the requirements  
10                    of this paragraph, then in the case of any  
11                    compensation which is not repaid to the  
12                    employer in violation of subparagraph  
13                    (A)(i) and any compensation which is de-  
14                    ferred under the plan in violation of sub-  
15                    paragraph (A)(ii), paragraph (1)(B) shall  
16                    not apply and the tax imposed by this  
17                    chapter for the taxable year shall be in-  
18                    creased by an amount equal to—

In no event shall the effective rate of tax imposed by this chapter on any such compensation be greater than 100 percent.

10                             “(ii) COORDINATION WITH EMPLOYER  
11                             WITHHOLDING.—For purposes of applying  
12                             section 3402(a) to—

13                             “(I) any compensation which is  
14                             not repaid to the employer in violation  
15                             of subparagraph (A)(i), and

which is treated as wages for a taxable year by reason of this paragraph, in lieu of the rate of tax applicable under section 3402(a)(1), tax shall be withheld on such compensation at a rate of 100 percent.”.

**24 (b) CONFORMING AMENDMENTS.—**

(1) Subclause (I) of section 409A(a)(1)(A)(i) of the Internal Revenue Code of 1986 is amended by striking “and (4)” and inserting “(4), and (5)”.

7 (c) EFFECTIVE DATE.—

8                         (1) IN GENERAL.—The amendments made by  
9                         this section shall apply to amounts deferred under  
10                        nonqualified deferred compensation plans (as defined  
11                        in section 409A(d)(1) of the Internal Revenue Code  
12                        of 1986) in taxable years beginning after the date  
13                        of the enactment of this Act.

